

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FILED

JAN 23 1997

AT 8:30 _____ M
WILLIAM T. WALSH
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

BENJAMIN FARBER, DISCH
CONSTRUCTION COMPANY, AND
ESSEX CHEMICAL COMPANY,
Defendants

Honorable Alfred M. Wolin

Civil Action No.
86-3736 (AMW)

BENJAMIN FARBER,

Defendant and Third
Party Plaintiff,

v.

PUREX CORPORATION, et. al.,
Third-Party Defendants

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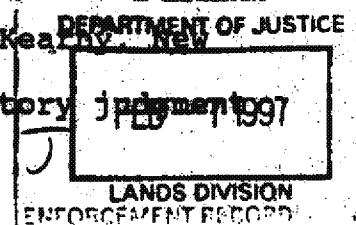
ENTERED

ON THE DOCKET

WILLIAM T. WALSH CLERK

CONSENT DECREE

WHEREAS, the United States of America (the "United States"), on behalf of the Administrator of the U.S. Environmental Protection Agency ("EPA"), has filed a complaint herein against Defendants Benjamin Farber ("Farber") ("Settling Defendant"), Disch Construction Company ("Disch"), and Essex Chemical Corporation ("Essex"), pursuant to Sections 107(a) and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9607(a) and 9613(g), seeking recovery of costs incurred and to be incurred by the United States in responding to the release or threat of release of hazardous substances at or in connection with a site located at 77-81 Jacobus Avenue, South Kearny, New Jersey ("the Site" or "Syncon Site"), and a declaratory judgment



that Farber, Disch, and Essex are each jointly and severally liable for further response costs;

WHEREAS, defendants Farber, Essex, and Disch have filed third-party complaints and/or cross-claims for contribution, pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), against a number of parties;

WHEREAS, the United States has incurred, and continues to incur, Response Costs in responding to the release or threat of release of hazardous substances at or in connection with the Site;

WHEREAS, in response to the release or threat of a release of hazardous substances at and from the Syncon Site, EPA funded a Removal Action, which commenced on February 7, 1984, to abate an imminent and substantial threat caused by the abandoned drums found on the Site;

WHEREAS, the EPA funded a Remedial Investigation/Feasibility Study, completed in August, 1986, to study and analyze the conditions at the Site and to consider alternative remedial actions to be taken at the Site;

WHEREAS, on September 29, 1986, EPA signed a Record of Decision which embodied the selection of a remedy for the conditions at the Site;

WHEREAS, EPA completed the Remedial Design of the selected remedy in January 1989, and EPA is currently performing the Remedial Action at the Site;

WHEREAS, the Settling Defendant has filed a claim with his insurance carriers;

WHEREAS, the Regional Administrator of the EPA, Region II ("Regional Administrator") has determined that prompt settlement of the potential liability of Settling Defendant for past and future response costs incurred and to be incurred by the United States is practicable and in the public interest;

WHEREAS, the United States and Settling Defendant recognize, and the Court by entering this Consent Decree finds, that settlement and resolution of the claims against and potential liability of Settling Defendant do not constitute any admission or adjudication of any issue of fact or law, and will avoid expensive and protracted litigation, and that entry of this Consent Decree, therefore, is fair, reasonable and in the public interest;

NOW, THEREFORE, it is ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This court has both personal and subject matter jurisdiction over this matter and the parties pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345. The complaint states claims upon which relief may be granted. The Parties agree to be bound by the terms of this Consent Decree and not to contest its validity in any subsequent proceeding arising from it.

2. Venue is proper in this Court pursuant to 42 U.S.C. 9613(b) and under 28 U.S.C. §§ 1391(b) and (c).

II. PARTIES BOUND

3. This Consent Decree shall apply to and be binding upon the United States and upon the Settling Defendant and his heirs,

agents, successors and assigns, including the estate of the Settling Defendant. Any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendant under this Consent Decree. The Settling Defendant to this Consent Decree certifies that he is fully capable and authorized to enter into the terms and conditions of this Consent Decree.

III. DEFINITIONS

4. Unless otherwise expressly provided herein, the terms of this Consent Decree shall have the meaning assigned to those terms by CERCLA and its implementing regulations and the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Certification of Completion" shall mean the document or other instrument, and the date thereof, in which the United States certifies that remedial action has been completed at the Site, in accordance with Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3).

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Hazardous substances" shall mean any substance meeting the definition of: (1) "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (2) "pollutant" or "contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

"Insurance Policy" shall mean every policy of liability insurance of whatever type, whether designated as a general liability policy, comprehensive general liability policy, blanket liability policy, liability policy, products liability policy, or otherwise, including both primary and excess policies.

"Parties" shall mean the United States and the Settling Defendant.

"Record of Decision" or "ROD" shall mean the Record of Decision signed by EPA on September 29, 1986, which embodied the selection of a remedy for the conditions at the Site.

"Regional Administrator" shall mean the Regional Administrator of EPA, Region II.

"Response Costs" shall mean all costs, including but not limited to, direct and indirect costs, together with accrued interest, that the United States has incurred, is incurring and/or will incur in response to the release or threatened release of hazardous substances at or connected with the Site.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral and including one or more paragraphs.

"Settling Defendant" shall mean Benjamin Farber.

"State" shall mean the State of New Jersey.

"Syncon Site" or "Site" shall mean the site located at 77-81 Jacobus Avenue, South Kearny, Hudson County, New Jersey. The Syncon Site is comprised of three (3) lots, numbers 12, 13, and 13R of Block 289 of the Tax Map of the Town of Kearny.

"United States" shall mean the United States of America and its agencies, departments and instrumentalities.

"Waste Materials" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); or (3) any hazardous waste as defined under Section 1004(5) of RCRA, 42 U.S.C. § 9604(5).

IV. JUDGMENT AND SETTLEMENT

5. Judgment shall be entered against Settling Defendant in the amount of \$19,000,000 in favor of the United States.

6. In recognition of the apparent financial status of Settling Defendant, the United States will forego any and all attempts to recover the full \$19,000,000 from Mr. Farber provided: (A) the financial information provided to the United States by Settling Defendant on or about April 7 and December 22, 1993, was to the best of Settling Defendant's knowledge accurate at the time such information was served upon the United States; and (B) Settling Defendant pays to the United States (1) the sum of \$750,000, (2) all net proceeds accruing to Settling Defendant from the sale of all or any portion of the real property known as the Syncon Site (Block 289, Lots 12, 13, and 13R of the Tax Map of the Town of Kearny, New Jersey, and more fully described in Appendix A) pursuant to Section VI, below, and (3) a percentage of the proceeds recovered from any Insurance Policies pursuant to Section VII, below.

7. Should the United States, after entry of this Consent Decree learn or conclude that the financial information provided by Settling Defendant was incorrect at the time it was served upon the United States, to the extent that such information materially understated the financial worth of Settling Defendant,

the covenant not to sue in Section XII, of this Consent Decree, shall at the United States' sole discretion be null and void, unless the Settling Defendant can show to the United States' satisfaction that the Settling Defendant did not intentionally understate the value of his financial worth in representations made to the United States. To the extent that the United States determines that the Settling Defendant did not intentionally understate the value of his financial worth, the United States shall be authorized to institute action, and the covenant not to sue in Section XII, of this Consent Decree, shall not prohibit such action, to collect the difference in the amount disclosed by the Settling Defendant and the actual value of Settling Defendant's financial worth.

V. PAYMENT TO THE UNITED STATES

8. Within thirty (30) days of the signing of this Consent Decree by Settling Defendant, the Settling Defendant shall establish an escrow account (the "Escrow") bearing interest on commercially reasonable terms in a federally-chartered bank doing business in the State of New Jersey, and shall pay into the account the sum of \$750,000. The Escrow agent shall be subject to prior approval by the United States. The Escrow agreement between the Settling Defendant and the Escrow agent shall provide that the Escrow agent shall submit to the jurisdiction and venue of this Court in connection with any litigation arising out of the Escrow agreement. The Settling Defendant shall provide the Escrow agent with a copy of this Consent Decree. The Settling Defendant shall immediately notify the United States in writing of the creation and funding of the Escrow. This notification

shall include the identity and location of the bank at which the Escrow account is established and the account number and other identifying information. This notice shall be sent to the United States at the addresses set forth in Paragraph 12. The fees, costs, taxes, and charges of the Escrow shall be paid by the Settling Defendant.

9. All funds paid into the Escrow by the Settling Defendant (\$750,000), and all interest earned on those funds, shall remain in the Escrow and may not be withdrawn by any person, except to make payment required by Paragraph 10 below, unless either (1) the United States withdraws or withholds its consent to the entry of this Consent Decree after the Consent Decree has been lodged, pursuant to Paragraph 49, or (2) the Court declines to enter the Consent Decree, and the United States has not appealed the Court's decision or has exhausted its appeals. If one of these events occurs, all funds paid into the Escrow shall be returned to the Settling Defendant together with the interest accrued on them.

10. Within thirty (30) days of entry of this Consent Decree by this Court, the Settling Defendant shall cause all funds paid into the Escrow (\$750,000), plus interest accrued thereon, to be disbursed to the United States. After such disbursement, the Escrow shall be terminated.

11. Funds disbursed from the Escrow to the United States pursuant to Paragraph 10 above shall be transferred by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice ("DOJ") lockbox bank, referencing the CERCLA Number NJDO64263817, and the U.S.A.O. file number DOJ# 90-11-3-116.

Payment shall be made in accordance with instructions provided by the United States to the Settling Defendant upon execution of the Consent Decree. Any EFTs received at the DOJ lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day.

12. Within one week of the EFT, the Settling Defendant shall send a letter, which references the date of the EFT, the amount, the name of the Site, the civil action number of this case, the EPA Region/Site ID number (#02-33), the DOJ case number (#90-11-3-116), and the name and address of the Settling Defendant, to the following:

Chief, New Jersey Superfund Branch
Re: Syncon Resins Site
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, New York 10007-1866

Chief, Environmental Enforcement Section
Re: DOJ #90-11-3-116
Environmental and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044

13. In the event that payment of the funds to the United States from the Escrow (\$750,000, plus interest accrued thereon), required by Paragraph 10, above, is not made within thirty (30) days of the effective date of this Consent Decree the Settling Defendant shall pay interest on the unpaid balance at the same rate as is specified for interest on the investments of the Hazardous Substance Superfund, and such interest shall be compounded each federal fiscal year. The interest on such unpaid balance shall begin to accrue on the 30th day after the effective date of this Consent Decree.

14. If the United States must bring an action to collect any payment required under this Consent Decree, the Settling Defendant shall reimburse the United States for all costs of such action, including, but not limited to, attorney's fees.

15. Payments made under Paragraphs 13 and 14 shall be in addition to any other remedies or sanctions available to the United States by virtue of Settling Defendant's failure to make timely payments, as required by this Consent Decree.

VI. CONVEYANCE OF THE SITE PROPERTY

16. Prior to any sale(s) of all or a portion of the property known as the Syncon Site in which Settling Defendant has an interest, the final sale price shall be subject to EPA's written approval; provided, however, that such written approval will not be unreasonably withheld if the sale price is equal to the appraised value (i.e., appraisal must be within one year of potential sale). EPA, in its sole discretion, may disapprove a sale price which is less than the appraised value. In the event of any sale(s), Settling Defendant shall pay all net proceeds of the sale(s) which accrue to Settling Defendant to the United States within thirty (30) days of Settling Defendant's receipt of the funds. Settling Defendant shall pay the proceeds of the sale(s) to the United States in accordance with the payment instructions set forth in Paragraphs 11 and 12, above.

17. In the event that payment required by Paragraph 16, is not made within thirty (30) days of receipt of the sale proceeds by Settling Defendant, the Settling Defendant shall pay interest on the unpaid balance at the same rate as is specified for interest on the investments of the Hazardous Substance Superfund,

and such interest shall be compounded each federal fiscal year. The interest on such unpaid balance shall begin to accrue on the 30th day after Settling Defendant's receipt of the sale proceeds.

18. Any prospective purchaser must be provided with a copy of this Consent Decree, and EPA may condition approval of any sale of the Site, or portion thereof, on agreement by the purchaser to comply with Section IX (Access) of this Consent Decree. For purpose of this Consent Decree, any person or entity that acquires any possessory interest in the Site, or portion thereof, shall be referred to as a "successor-in-interest" with regard to the Site.

VII. PAYMENT OF INSURANCE PROCEEDS

19. Settling Defendant agrees to pay the proceeds from any Insurance Policies, minus reasonable attorney fees and administrative costs, which are paid to Settling Defendant after entry of this Consent Decree to the United States in satisfaction of this judgment of liability within thirty (30) days of Settling Defendant's receipt of the funds in accordance with the terms set forth below in Paragraph 20.

20. The portion of the insurance proceeds that Settling Defendant shall pay to the United States will vary depending upon the total amount of proceeds collected by Settling Defendant. After deducting reasonable attorneys fees and administrative costs from the insurance proceeds received, Settling Defendant shall pay the remaining proceeds to the United States as follows: (1) 75 percent of all remaining proceeds less than or equal to \$2,000,000; (2) 90 percent of all remaining proceeds in excess of \$2,000,000 and less than or equal to \$3,500,000; 3) 99 percent of

all remaining proceeds in excess of \$3,500,000 and less than or equal to \$13,500,000; and (4) 100 percent of all remaining proceeds in excess of \$13,500,000. Settling Defendant shall pay the insurance proceeds to the United States in accordance with the payment instructions set forth in Paragraphs 11 and 12, above.

21. In the event that payment required by Paragraphs 19 and 20, is not made within thirty (30) days of receipt of the insurance proceeds by Settling Defendant, the Settling Defendant shall pay interest on the unpaid balance at the same rate as is specified for interest on the investments of the Hazardous Substance Superfund, and such interest shall be compounded each federal fiscal year. The interest on such unpaid balance shall begin to accrue on the 30th day after Settling Defendant's receipt of the insurance proceeds.

VIII. STIPULATED PENALTIES

22. On any amount due under Sections V, VI and VII, but not paid by the required date, the Settling Defendant shall pay as a stipulated penalty, in addition to the interest and costs required by Paragraphs 13, 14, 17 and 21, \$750.00 per day for each day that such payment is tendered late. The payment of stipulated penalties is due upon demand. Stipulated penalties shall accrue from the date of the violation regardless of whether the United States has made a demand for payment.

23. All amounts owed to the United States under Paragraph 22 shall be due and payable within thirty (30) days of Settling Defendant's receipt from EPA of a demand for payment of the penalties. All payments made under Paragraph 22 shall be by

cashier's or certified checks made payable to the EPA Hazardous Substance Superfund," which shall be transmitted to:

EPA - Region II
Attention: Superfund Accounting
Re: NJDO64263817
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

The checks and the transmittal letters shall reference the name of the Site, the civil action number of this case, the EPA Region/Site ID number (#02-33), the DOJ case number (#90-11-3-116), and the name and address of the Settling Defendant. Copies of the checks and transmittal letters shall also be submitted to EPA and DOJ, as follows:

Chief, New Jersey Superfund Branch
Re: Syncon Resins Site
Office of Regional Counsel
U.S. Environmental Protection Agency
Region II
290 Broadway, 17th Floor
New York, New York 10007-1866

Chief, Environmental Enforcement Section
Re: DOJ #90-11-3-116
Environmental and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044

24. In the event Settling Defendant fails to pay stipulated penalties pursuant to Paragraph 23, above, EPA may institute proceedings in this action or a new action in the United States District Court to recover such stipulated penalties and any other appropriate relief. The stipulated penalties set forth in Paragraph 22 do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of a refusal or failure to comply with the terms or conditions of this Consent Decree.

25. Any payment made pursuant to Paragraph 23 is not deductible for tax purposes.

IX. ACCESS TO THE SITE

26. Settling Defendant hereby grants the United States and the State of New Jersey, and their representatives, including EPA and its contractors, and all other parties performing response actions under EPA oversight, an irrevocable right of access to the Site for the purposes of conducting response actions at the Site including, but not limited to:

a. Designing, implementing, and monitoring the response action selected by EPA in the ROD or any subsequent remedy selected by EPA for the Site or any additional work deemed necessary by EPA to meet the objectives of any removal or remedial action;

b. Conducting activities which EPA deems necessary for the operation and maintenance of the remedial actions selected for the Site;

c. Verifying that no action is being taken in violation of this Consent Decree or any other federal or state environmental laws or regulations;

d. Observing and monitoring any response actions being performed pursuant to CERCLA;

e. Assessing the need for or planning or implementing additional response actions at or near the Site; and

f. Any other lawful purpose.

27. Notwithstanding any provision of this Consent Decree, the United States and the State each retain all of their access authorities and rights, including access and enforcement

authorities related thereto, under CERCLA, RCRA and any other statutes or regulations.

28. Nothing in this Consent Decree shall in any manner restrict or limit the nature or scope of response actions which may be taken by EPA in fulfilling its responsibilities under federal and state law. Settling Defendant agrees to cooperate fully with EPA in the implementation of all response actions at the Site, and recognizes that response actions may be performed by contractors, consultants, agents or authorized representatives of EPA, or the potentially responsible parties ("PRPs") under the terms of a consent decree or administrative order. Settling Defendant further agrees neither to interfere with such response actions nor to take actions at the Site that are inconsistent with any response action selected by EPA and carried out by any person. Settling Defendant recognizes and agrees that the implementation of response actions at the Site may interfere with Settling Defendant's use of the Site. In full recognition that interruption of normal use of the Site will occur during implementation of response actions at the Site, Settling Defendant agrees, pursuant to Section XIV, Paragraphs 44 and 45 herein, not to assert claims against the United States or the Hazardous Substances Superfund with respect to matters arising out of or relating to expenses incurred or work performed pursuant to the ROD, and not to seek any other costs, or damages, including claims for property damages, takings, or condemnation of real property, or attorneys' fees from the United States arising out of response activities at the Site.

X. ACCESS TO INFORMATION

29. The Settling Defendant shall provide to EPA, upon request, copies of all documents and information within his possession or control or that of his contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, sample traffic routing, correspondence, or other documents or information related to the Site.

30. Until five (5) years after the entry of this Consent Decree, the Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into his possession or control, which relate in any manner to response actions taken at the Site or liability of any person for response actions conducted or to be conducted at the Site, regardless of any corporate retention policy to the contrary, provided, however, that at any time prior to the elapsing of five (5) years after the entry of this Consent Decree, the Settling Defendant may, without penalty, provide EPA with such records and documents.

31. If, at the conclusion of the five (5) year document retention period, the Settling Defendant has not provided EPA with such records or documents, the Settling Defendant shall notify the United States at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, shall deliver any such records or documents to EPA.

32. The Settling Defendant may assert business confidentiality claims concerning part or all of the documents or

information submitted to EPA under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).

Documents or information determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified the Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), the public may be given access to such documents or information without further notice to the Settling Defendant.

33. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site, and any other information relating to potentially responsible parties at the Site.

34. The Settling Defendant may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant asserts such a privilege, it shall provide EPA with the following information: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a

description of the subject of the document, record, or information; and (6) the privilege asserted. However, no document, reports, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

XI. CERTIFICATION AND STIPULATION

35. The Settling Defendant certifies, for purposes of this Consent Decree and to the best of his knowledge, that he has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to his potential liability regarding the Site since notification of potential liability by the United States or the filing of suit against him regarding the Site and that he has fully complied with any and all EPA requests for information pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and Section 3007 of RCRA, 42 U.S.C. § 6927. The Settling Defendant also certifies that all information submitted in response to all of EPA's requests for information is true and correct, to the best of his knowledge. In addition, Settling Defendant certifies, to the best of his knowledge, that the value of Settling Defendant's financial worth has not materially increased from that represented in his April 7, 1993 and December 22, 1993 responses to EPA's requests for information.

XII.-COVENANT NOT TO SUE BY PLAINTIFF

36. In consideration of the payments that will be made by Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Sections IV and XIII, the United States covenants not to sue or to take any civil or

administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA for the recovery of Response Costs. Except with respect to future liability, this covenant not to sue shall take effect upon the receipt by EPA of the payments required by Section V. With respect to future liability, this covenant not to sue shall take effect upon Certification of Completion of the remedial action by EPA. This covenant not to sue is conditioned upon the complete and satisfactory performance by Settling Defendant of his obligations under this Consent Decree.

37. This covenant not to sue only extends to Settling Defendant and does not release any other person from liability. Nothing in this Consent Decree shall preclude EPA from enforcing the provisions of this Consent Decree in any administrative or judicial proceeding.

XIII. RESERVATION OF RIGHTS

38. The United States reserves all claims, demands, and causes of action, past or future, judicial or administrative, in law or equity, including but not limited to, cost recovery and injunctive relief and natural resource damages, against any person or entity, not a signatory to this Consent Decree. Nothing contained herein shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial or administrative, under Sections 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, 9607, or any other provision of law, against any person or entity not a party to this Consent Decree. Any claim or defense which the United States or the Settling Defendant may have

against any other person or entity not a party to this Consent Decree, including but not limited to claims for indemnity or contribution, is expressly reserved.

39. Nothing in this Consent Decree is intended to be nor shall it be construed as a release or a covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which the United States, including EPA, may have against Settling Defendant for:

- (1) claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
- (2) liability arising for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting to natural resources, as defined in Section 101(16) of CERCLA, 42 U.S.C. §9601(16);
- (3) liability for response costs that have been or may be incurred by any federal agencies other than EPA or the Department of Justice on behalf of EPA;
- (4) claims based upon criminal liability;
- (5) liability arising from future disposal activities by the Settling Defendant at the Site;
- (6) any claim or cause of action not expressly included in the covenant not to sue set forth in Section IX, paragraph A, of this Consent Decree;
- (7) claims based upon liability, if any, for violations of federal or state law which occur during or after implementation of the Remedial Action;

(8) claims seeking, or liability for, the securing and implementation of Institutional Controls.

Institutional Controls shall mean any covenants, conditions, restrictions, and other equivalent requirements and controls, to ensure the integrity and effectiveness of the remedial action.

40. If the Settling Defendant has made material misrepresentations in the certification made pursuant to Section XI, (i) nothing in this Consent Decree constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States to seek or obtain further relief from the Settling Defendant, and (ii) the covenant not to sue in Section XII, of this Consent Decree, shall, at the United States sole discretion, be null and void.

41. Nothing in this Consent Decree shall be deemed to limit the authority of the United States under Section 104 or 106 of CERCLA, 42 U.S.C. §§ 9604 or 9606, or as otherwise provided by law, to take any response actions in connection with the Site.

42. The obligations of Settling Defendant in this Consent Decree were negotiated based upon the financial documents received from the Settling Defendant and Settling Defendant's representations about his financial resources. This Consent Decree is based upon Settling Defendant's limited assets and the financial needs of Settling Defendant. If, after entry of this Consent Decree by this Court, information is received to suggest that: 1) Settling Defendant's financial resources are materially greater than what has been represented to the United States prior to the entry of the Consent Decree; and 2) Settling

Defendant intentionally understated the value of his financial resources in those representations, the covenants and obligations of the United States to Settling Defendant identified in Section XII, shall, at the United States sole discretion, be null and void.

43. The United States and the Settling Defendant agree that the actions undertaken by the Settling Defendant in accordance with this Consent Decree do not constitute an admission of any liability by the Settling Defendant. This Consent Decree shall not be used as evidence in any judicial or administrative proceeding except one to enforce this Consent Decree.

XIV. COVENANTS BY SETTLING DEFENDANT

44. The Settling Defendant hereby covenants not to sue and agrees not to assert any causes of action, claims, or demands against the United States, its agencies, officers, representatives, contractors or employees with respect to the Site or this Consent Decree, or arising out of or relating to response activities at the Site, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund under Sections 106(b)(2), 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, or 9613, or any other provision of law; any claim against the United States, including any department, agency, or instrumentality of the United States under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, related to the Site; or any claims arising out of response activities at the Site.

45. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of

Section 111 of CERCLA, 42 U.S.C. §§ 9611, or 40 C.F.R. § 300.700(d).

XV. CONTRIBUTION PROTECTION

46. With regards to claims for contribution against the Settling Defendant for matters addressed in this Consent Decree, the Parties hereto agree that, upon receipt by the United States of the payments required by Section V, the Settling Defendant is entitled to such protection from contribution actions or claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

47. The Settling Defendant agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree it will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim. The Settling Defendant also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree it will notify in writing the United States within ten (10) days of service of the complaint on it. In addition, the Settling Defendant shall notify the United States within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial for matters related to this Consent Decree.

48. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief related to the Site, the Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, ~~res~~

judicata, collateral estoppel, issue preclusion, claim-splitting, or other defense based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this paragraph affects the enforceability of the covenant not to sue set forth in Sections XII and XIV.

XVI. PUBLIC COMMENT

49. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to a judgment based on this Consent Decree if comments received disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper or inadequate. The Settling Defendant agrees to the entry of this Consent Decree without further notice.

50. The Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendant in writing that it no longer supports entry of this Consent Decree.

XVII. MODIFICATION

51. No modification shall be made to this Consent Decree without written agreement of both parties and written notification to and written approval of the Court. The notification required by this Section shall set forth the nature of and reasons for the requested modification. No oral modification of this Consent Decree shall be effective. Nothing

in this paragraph shall be deemed to alter the Court's power to supervise or modify this Consent Decree.

XVIII. RETENTION OF JURISDICTION

52. The District Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Consent Decree.

XIX. SIGNATORIES/SERVICE

53. The undersigned representative of the Settling Defendant, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, and the Regional Administrator for Region II of the Environmental Protection Agency certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

54. The Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of the Settling Defendant with respect to all matters arising under or relating to this Consent Decree. The Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XX. FINAL JUDGMENT

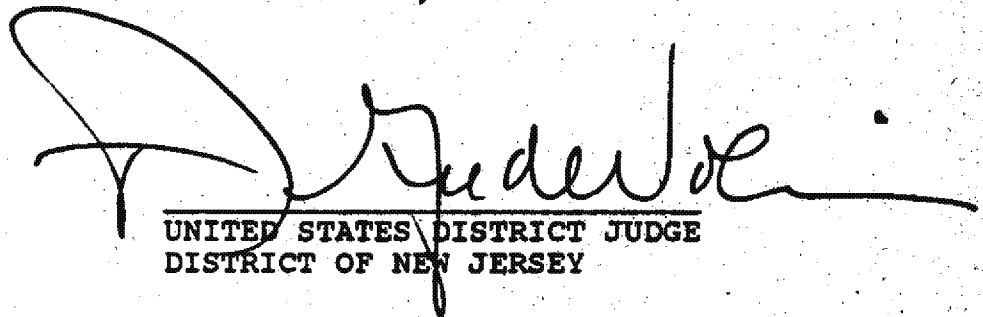
55. The Court finds that there is no just reason for delay in the entry of final judgment against the Settling Defendant following entry by the Court of this Consent Decree. Upon entry by the Court, this Consent Decree shall constitute a final

judgment against the Settling Defendant for purposes of Rule 54 of the Federal Rules of Civil Procedure.

XXI. EFFECTIVE DATE

56. This Consent Decree shall become effective upon entry by the Court.

So Ordered This 23 Day of JANUARY, ~~1996~~ 1997


UNITED STATES DISTRICT JUDGE
DISTRICT OF NEW JERSEY

FOR PLAINTIFF - UNITED STATES

Lois J. Schiffer
Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
10th & Pennsylvania Avenue
Washington, DC 20530

DATE: 11/12/96

Peter M. Flynn
Peter M. Flynn
Senior Attorney
Environment and Natural Resources
Division
United States Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

DATE: 11/13/96

Faith S. Hochberg
United States Attorney
District of New Jersey

BY:

Susan C. Cassell
Susan C. Cassell
Assistant United States Attorney
Deputy Chief, Civil Division
970 Broad Street, Room 502
Newark, New Jersey 07102

DATE: 11/18/96

C. M. Fox
Jeanne M. Fox
Regional Administrator
U.S. Environmental Protection Agency
Region II
290 Broadway
New York, New York 10007-1866

DATE:

9/30/96

Deborah L. Mellott
Deborah L. Mellott
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region II
290 Broadway
New York, New York 10007-1866

DATE:

9/25/96

FOR SETTLING DEFENDANT,
BENJAMIN FARBER

Benjamin Farber

DATE:

Aug 30, 1996

Name: Benjamin Farber

Address:

*13893 Le Havre Dr.
Palm Beach Gardens, FL 33410*

Agent authorized to accept service on behalf of the
above-signed party:

Bressler, Amery & Ross
P.O. Box 1980
Morristown, N.J. 07962

Attention: David P. Schneider, Esq.

APPENDIX A

Block: 289

Lot: 12

BEGINNING at a point on the westerly side of Jacobus Avenue, which point is distant 1935.16 feet northerly from Lincoln Highway as measured along the westerly side of said Jacobus Avenue; running thence North 78 degrees 11 feet 40 inches West along the northerly line of property now or formerly of American Mineral Spirits Co., 893 feet to a point on the easterly side of lands now or formerly of Co-operative G.L.F. Holding Corporation; thence along the easterly side of said lands North 11 degrees 36 feet 20 inches East 193.79 feet to a cross on a concrete monument; thence along the southerly line of lands also now or formerly of Cooperative G.L.F. Holding Corporation, South 78 degrees 9 feet 40 inches East, 893.67 feet to a point on the westerly side of Jacobus Avenue; thence southerly along the westerly side of Jacobus Avenue on a course bearing South 11 degrees 48 feet 20 inches West, 193.27 feet to the point or place of beginning.

BEING the same premises conveyed by Farnow, Inc., a Corporation of the State of New Jersey, to Benjamin Farber by Warranty Deed, dated November 10, 1961, intended to be recorded in the Office of the Register of Hudson County.

TOGETHER with all right, title and interest, if any, of the Seller in and to any land lying in the bed of any street, road or avenue opened or proposed, in front of or adjoining said premises to the center line thereof.

SUBJECT TO:

1. Agreement as to switching rights in the Pennsylvania Railroad Company siding as contained in deed from Cooperative G.L.F. Holding Corporation to the Valspar Corporation dated Dec. 12, 1944 and recorded Dec. 22, 1944 in Deed Book 2091, page 85.
2. Permission granted by Valspar Corporation to Cooperative G.L.F. Holding Corporation, a New York corporation, to continue waterlines and hydrants on the demised premises, which permission is terminable at any time and does not create any right or easement.
3. Switch Track Agreement dated March 24, 1947 between the Valspar Corporation, Cooperative G.L.F. Holding Corporation and the Pennsylvania Railroad and referred to in Deed Book 2641, page 369.
4. Reservations and exceptions contained in deed from Newark Meadows Improvement Company to Indian Refining Co. dated February 17, 1910 and recorded in Deed Book 1052, page 422, together with

all of the right, title and interest of the party of the first part in and to the reservations and the right of way more particularly described in said deed.

5. A mortgage in the sum of \$82,500 made and delivered on the 10th day of November, 1961 by Farnow, Inc. to the Reardon Company.

Block: 289

Lots: 13 and 13R

BEGINNING at a point in the westerly side of Jacobus Avenue distant 2128.43 feet northerly from a corner formed by the intersection of the northerly extended line of the Lincoln Highway with the westerly extended line of Jacobus Avenue.

Running thence (1) north 78 deg. 11 min. 40 sec. west, 893.67 feet to a point.

Running thence (2) south 11 deg. 36 min. 20 sec. west, 193.79 feet to a point.

Running thence (3) north 78 deg. 11 min. 40 sec. west, 251.73 feet to a point in the established bulk head line of the Passaic River.

Running thence (4) along the established pier or bulk head line in the Passaic River, north 3 deg. 28 min. 55 sec. west 421.40 feet to a point.

Running thence (5) still along the established pier or bulk head line in the Passaic River, north 29 deg. 45 min. 13 sec. west, 153.71 feet to a point.

Running thence (6) south 78 deg. 11 min. 40 sec. east, 1357.78 feet to a point in the westerly side of Jacobus Avenue.

Running thence (7) along the westerly side of Jacobus Avenue south 11 deg. 48 min. 20 sec. west, 328.15 feet to the point or place of BEGINNING.

Containing 10.531 acres including land out to the established pier head line.

SUBJECT TO a first mortgage now a lien against said premises in the sum of \$319,362.15 and held by the Bank of New York, which the grantee assumes and agrees to pay.

Being the same premises conveyed to Charter Bulk Service, Inc., by deed from Agway, Inc., dated April 27, 1966 and recorded May 3, 1966 in the Office of the Register of Deeds of Hudson County in Book 2995 Page 545.